

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

CRIMINAL 05-0192 (JAG)

FABRICIO RAMÍREZ-GARCÍA,
aka MAURO ROMERO,
aka MAURO ROMERO-GARCÍA,

Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11 PROCEEDINGS (PLEA OF GUILTY)

I. Personal Background

On June 1, 2005, Fabricio Ramírez-García, the defendant herein, was charged in a one-count indictment. Count one charges defendant with being an alien previously deported from the United States, was found in or near Vega Baja, Puerto Rico, that is in the United States, without obtaining, prior to his reembarkation at a place outside the United States, the express consent from the Attorney General of the United States, or his successor, the Secretary of Homeland Security, acting through the Under Secretary for Border and Transportation Security, pursuant to 6 U.S.C. §§ 202(3), 202(4) and 557, to such alien's reapplying for admission.

Defendant's previous deportation or removal, in 1990, was subsequent to a conviction for an aggravated felony, to wit: laundering of monetary instruments, in violation of 18 U.S.C. § 1956, for which he received a sentence of four years imprisonment. All in violation of 8 U.S.C. § 1326(a)(1)(2) and (b)(2).

Defendant filed a motion for change of plea on March 6, 2006.

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3 II. Consent to Proceed Before a Magistrate Judge

4 On March 20, while assisted by Max Pérez-Bouret, Assistant Federal Public
5 Defender, the defendant, by consent, appeared before me in order to change his
6 previous not guilty plea to a plea of guilty as to count one of the indictment.

7 In open court the defendant was questioned as to the purpose of the hearing
8 being held. The defendant responded that the purpose of the hearing was to plead
9 guilty. The defendant was advised of his right to have all proceedings, including the
10 change of plea hearing, before a United States district judge. Defendant was given
11 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries
12 were to be conducted under oath and that it was expected that his answers would
13 be truthful (he was also explained that the consequences of lying under oath could
14 lead to a perjury charge); and (c) his right to have the change of plea proceedings
15 presided over by a district judge instead of a magistrate judge. The defendant was
16 also explained the differences between the appointment and functions of the two.
17 The defendant consent to proceed before this magistrate judge.

18 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

19 A. Compliance With Requirements Rule 11(c)(1)

20 Rule 11 of the Federal Rules of Criminal Procedure governs the
21 acceptance of guilty pleas to federal criminal violations. Pursuant to
22 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
23 defendant's right to trial, guilty pleas must be knowing and voluntary:
24 "Rule 11 was intended to ensure that a defendant who pleads guilty
25 does so with an 'understanding of the nature of the charge and
26 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
(1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
(1969)). [There are three core concerns in these proceedings]: 1)
27 absence of coercion; 2) understanding of the charges; and 3) knowledge
28 of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

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In response to further questioning, defendant was explained and he understood that if convicted on the count of the indictment he was exposed to a maximum imprisonment term of 20 years, and/or a maximum fine of \$250,000, and a three-year supervised release could be imposed.

He was further explained that the court must also impose a mandatory penalty assessment of \$100 per count, to be deposited in the Crime Victim Fund, pursuant 18 U.S.C. 3013(a).

Defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon him, he later could not withdraw his guilty plea if he was unhappy with the sentence of the court. The defendant understood this.

Defendant was explained what the supervised release term means. It was emphasized that cooperation with the United States Probation officer would assist the court in reaching a fair sentence.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to him.

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving his guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no comment could be made by the prosecution in relation to his decision not to testify.

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3 3. To a speedy trial before a district judge and a jury, at which he would be
4 entitled to see and cross examine the government witnesses, present evidence on his
5 behalf, and challenge the government's evidence.

6 4. To have a unanimous verdict rendered by a jury of twelve persons which
7 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
8 of competent evidence.

9 5. To use the subpoena power of the court to compel the attendance of
10 witnesses.

11 Upon listening to the defendant's responses, observing his demeanor and his
12 speaking with his attorney, that to the best of counsel's belief defendant had fully
13 understood his rights, it is determined that defendant is aware of his constitutional
14 rights.

15 C. Consequences of Pleading Guilty

16 Upon advising defendant of his constitutional rights, he was further advised
17 of the consequences of pleading guilty. Specifically, defendant was advised that by
18 pleading guilty and upon having his guilty plea accepted by the court, he will be
19 giving up the above rights and would be convicted solely on his statement that he is
20 guilty.

21 Furthermore, the defendant was admonished of the fact that by pleading guilty
22 he would not be allowed later on to withdraw his plea because he eventually might
23 disagree with the sentence imposed, and that when he were under supervised
24 release, and upon violating the conditions of such release, that privilege could be
25 revoked and he could be required to serve an additional term of imprisonment. He
26 was also explained that parole has been abolished, and that there are immigration
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3 consequences to his conviction, that he would be deported to his native land upon
4 completion of his imprisonment.

5 D. Plea Agreement

6 The parties have not entered into any plea agreement. This is a straight plea.

7 E. Government's Evidence (Basis in Fact)

8 The government presented a proffer of its evidence with which the defendant
9 concurred in general.

10 Accordingly, it is determined that there is a basis in fact and evidence to
11 establish all elements of the offenses charged.

12 F. Voluntariness

13 The defendant accepted that no leniency had been promised, no threats had
14 been made to induce him to plead guilty and that he did not feel pressured to plead
15 guilty. He came to the hearing for the purpose of pleading guilty and listened
16 attentively as the prosecutor outlined the facts which it would prove if the case had
17 proceeded to trial.

18 IV. Conclusion

19 The defendant, by consent, has appeared before me pursuant to Rule 11,
20 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
21 of the indictment.

22 After cautioning and examining the defendant under oath and in open court,
23 concerning each of the subject matters mentioned in Rule 11, as described in the
24 preceding sections, I find that the defendant Fabricio Ramírez-García is competent
25 to enter this guilty plea, is aware of the nature of the offense charged and the
26 maximum statutory penalties that the same carries, understands that the charge is
27 supported by the government's evidence, has admitted to every element of the
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offense charged, and has done so in an intelligent and voluntary manner with full knowledge of the consequences of his guilty plea.

Therefore, I recommend that the court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to count one of the indictment.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d) of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court within five (5) days of its receipt. Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

At San Juan, Puerto Rico, this 23rd day of March, 2006.

S/ JUSTO ARENAS
Chief United States Magistrate Judge